WP(C) 2445/2007

BEFORE

HON'BLE THE MR. JUSTICE AMITAVA ROY

The grievance registered basically appertains to comprehended noncompliance of the directions contained in the judgment and order dated 23/2/2007 of this Court rendered in a batch of writ petitions, the lead case being WP(C) 3070/2006, Khanindra Das and others versus the State of Assam and others, requiring the State respondents to issue necessary guidelines for recruitment of Seasonal Workers under the Central Government Scheme nomenclatured National Malaria Eradication Programme (hereafter for short also referred to as the Programme) as well as to decide on the relevancy or otherwise of the services rendered by the DDT Spray Workers engaged under the aforementioned scheme to determine the preference/weightage to be extended to their services in the matter of selection to the post of Field Worker and Superior Field Worker (hereafter for short also referred to as FW and SFW respectively) in the Health and Family Welfare Department, Government of Assam. As the petitioners, who are serving as Seasonal Workers under various Primary Health Centres in different Districts of the State, the above pronouncement notwithstanding, apprehend ouster from their engagements, they approached this Court with several writ petitions, the lead case of that group being WP(C) 2440/07.

In the meantime, the process for regular appointments to the vacant post of FW and SFW in the afore-named department having been initiated by an advertisement dated 29/9/2006 on the prayer for interim relief, this Court by order dated 25/5/2007 passed in WP(C) 2440/2007 and other connected petitions while permitting the State respondents to proceed in the exercise, restrained them from making appointments to the posts involved.

The official respondents in the above proceedings having taken a stand that in deference to the aforementioned judgment and order of this Court, a set of guidelines has been formulated as embodied in the order dated 21/5/2007 of the Secretary to the Government of Assam, Health Department, laying down the norms for engagement of Seasonal Workers (hereafter also referred to as the SW) and that the DDT Spray Workers were not entitled to any preference or weightage in the matter of appointment of FW/SFW in the department, the petitioners and many other similarly situated instituted a fresh group of petitions, the lead case being WP(C) 3781/2007, Sanjib Kumar Roy and others versus State of Assam and others. Therein they questioned the validity of the guidelines as wanting in some provision for preference/weightage to them in engagement as Seasonal Workers as well as for selection to regular posts of FW/SFW in the department and prayed for a writ of mandamus directing the respondents to accord the same and comply with all other directions incidental thereto as enumerated in the judgment and order of this Court referred to hereinabove.

As the petitions are structured on common facts and issues raised are correlated those were heard analogously and are being disposed of by this judgment and order.

I have heard Mr. M. Bhuyan, learned Counsel for the petitioners and Mr. D. Saikia, learned Standing Counsel, Health and Family Welfare Department for the respondents.

As the petitions noticeably relate to the successive phases of the petitioners' remonstrance against the perceived inaction and/or non-compliance of the directions of this Court, the foundational facts being identical, it would be expedient to confine to the pleadings of WP(C) 3781/2007 and WP(C) 2440/2007 to glean the rival assertions. The petitioners, as noted hereinabove, claim to be serving or have served as FW or SFW for several years on seasonal basis with the respective Primary Health Centres in various Districts of the State under the Directorate of Health Services, Assam, and have thereby acquired considerable knowledge, skill and experience in combating malaria in Assam. It has been stated that to effectively quell the menace of the said disease, which assumed an alarming proportion in the recent years, the Central Government launched the Programme wholly sponsoring the same for the Northeastern States. According to the petitioners, however, for the lack of careful planning, monitoring and decision

making capability to harness a regular staff of field workers both in Grade III and Grade IV posts in the Primary Health Centres, malaria cases have increased in the State of Assam and the escalation of the disease could not be effectively curbed.

The petitioners have attributed this to a constant change of Seasonal Workers from year to year for which persons without knowledge and/or experience in the field of prevention of malaria are being recruited at the cost of public health undermining the solemn objective of the Centrally sponsored programme. The petitioners have maintained that the State Government not only has not framed suitable guidelines for recruitment and deployment of regular staff of field workers in the Primary Health Centres, it has singularly from time to time left out FW and SFW with past services, knowledge and experience to prefer persons without any exposure to the works expected and required to be performed. In other words, the petitioners' cavil is that recruitment as FW and SFW under the Programme on seasonal basis is being made ignoring the basic eligibility criteria of according preference to those having experience in the related field of activity. Being aggrieved by the continued insouciance of the State authorities in this regard, persons similarly situated approached this Court with WP(C) 2440/2007 and other connected petitions as already stated. This Court, in its judgment and order dated 23/2/2007, issued directions to the State respondents in the matter of weightage/preference at the time of recruitment of Seasonal Workers and regular incumbents in the post of FW and SFW in the State services, the essence whereof has been noticed hereinabove.

With reference to the guidelines contained in the communication dated 21/5/2007 as earlier alluded, the petitioners contend that the same did not contain any provision for granting preference/weightage to persons with past services and experience for engagement as Seasonal Workers as mandated by the above verdict of this Court. While pleading that in terms of the directions of this Court, the State respondents were also obliged to extend preference/weightage to them in the matter of regular selection to the post of FW/SFW in the State services, the nature of works and responsibility performed/discharged being wholly identical in both the engagements, the petitioners have maintained that the omission on their part is an infringement of the constitutional guarantee enshrined in Article 14, 21 and 39(A) of the Constitution of India. They have insisted that the minimum educational qualification for appointment as FW/SFW either on seasonal or regular basis is a pass in Class VIII standard as is apparent from the guidelines dated 21/5/2007 and the Circular No. V-108/Estt./05/11,287 dated 17/12/2005 issued by the Joint Director of Health Services (M), Assam. According to them, the Seasonal Workers, in addition to the DDT spraying works are also engaged in the jobs of technical nature like collection of blood slides from fever cases, examination of blood slides and assisting the Laboratory Assistants in carrying out blood tests. In discharge of their duties, the petitioners as FW/SFW on seasonal basis are also entrusted with the task of distributing medicine, mosquito nets etc. The have, therefore, asserted that the nature of works discharged by them is identical to and rather more strenuous than that of their counterparts in equivalent posts under the Department/Directorate concerned.

The State respondents in their counter have averred that in compliance of the judgment and order of this Court, the guidelines as contained in the communication dated 21/5/2007 have been formulated for engagement of Seasonal DDT Spray Workers on daily basis as and when their services would be required and that these norms would be followed for future recruitments of such workers. They, however, insisted that spraying of DDT is one of preventive measures to eradicate malaria in the State of Assam. Two rounds of fumigation are conducted in a year of sessions of 75 days each. The Seasonal DDT Spray Workers are engaged on daily wage basis and the number of squads for each District varies depending on the annual parasite incidence of the disease during the previous year. Each DDT Spray Squad comprises of five FW and one SFW as Supervisor and normally in engaging them their previous experience is recognized and preference is extended taking into account the physical fitness of the person concerned.

The State respondents further affirmed that the minimum educatio

nal qualification for a DDT Spray Worker was a pass in Class VIII standard which is further relaxable to the event considered necessary. They, however, asserted that the nature of works of DDT Spray Workers also designated as FW/SFW engaged under the Programme is completely different from that of the FW or SFW recruited under the Health and Family Welfare Department of the State inasmuch as their works are of technical nature. They are to assist the Laboratory Assistants and without them the Laboratory cannot function. The answering respondents clarified that the educational qualification for the post of FW/SFW in the Department is a pass in Higher Secondary Examination, which is higher than that required for the DDT Spray Worker. The nature of the works and the entry level qualifications for these two categories of recruits being distinctly different, the State respondents have pleaded that the experience of DDT Spray Workers is not considered relevant for the services to be rendered by the FW/SFW in the State services. According to them, weightage to the past services of a DDT Spray Worker for appointment as seasonal worker has been comprehended in the form of relaxation in the upper age limits for candidates having previous experience as depicted in the guidelines dated 21/5/2007. In that view of the matter, they have contended that no preference/weightage is sanctionable to the DDT Spray Workers for the selection to the post of FW and/or SFW for whose appointment the advertisement dated 29/9/2007 has been published and, therefore, there was no necessity of issuing any corrigendum to the said effect. The respondents, however, assured to issue a corrigendum indicating different category of posts in Grade IV available for recruitment shortly.

The pleaded reply of the petitioners vis- -vis the differentiation made by the official respondents between the Seasonal Workers under the Programme and the FW/SFW in the State services is that the plea that the nature of jobs and the entry level qualifications for the two engagement are different, is patently incorrect and flawed in face of the circular dated 17/12/2005 issued by the Joint Director of Health Services (M), Assam. They have reiterated that the works performed by them are wholly identical to those of the FW and the SFW in regular employment in the State services and that therefore the classification sought to be made is imaginary, arbitrary, unreasonable and discriminatory which is constitutionally impermissible.

Mr. Bhuyan has emphatically urged that the judgment and order dated 23/2/2007 of this Court having attained finality, the same not having been assailed in any higher forum, the State respondents were obliged in law to comply with the directions contained therein. He argued that the omission on the part of the State respondents to provide for weightage/preference to the petitioners and of those equally placed in the matter of engagement as Seasonal Workers under the Programme as well as selection for appointments on regular basis as FW and SFW with the Department besides being grossly arbitrary and contemptuous is without any justification what so ever and, therefore, a writ of mandamus, as prayed for, ought to be issued to uphold the rule of law and sustain the interest of justice. The learned Counsel referring to the State’s affidavit has submitted that it having been admitted therein that persons with past experience are being accorded preference for appointment as Seasonal Workers, a clause to the said effect ought to be, in categorical terms, incorporated in the guidelines dated 21/5/2007. In absence thereof, the guidelines are wholly ostentious. As a matter of fact, those run counter to the plea taken in the State’s affidavit, he urged. The learned Counsel further submitted that the academic qualification for being eligible to participate in the selection for the post of FW and SFW being a pass in Class VIII, as is evident from the letter dated 17/12/2005 of the Joint Director of Health Services, Assam, (Annexure V to WP(C) 3781/2007) and the nature of duties and responsibilities performed and discharged by the Seasonal Workers being the same as that of the FW and SFW of the Department, the respondent authorities were obliged in law in terms of the direction of this Court to regard the Seasonal Workers eligible for regular appointment to the post of FW and/or SFW in the Department and extend due weightage/preference on the basis of their past services. The impugned action being in contravention of the letter and spirit of the decision of this Court and in flagrant violation of the constitutional guaran

tee of equality in the matter of public appointment is liable to be adjudged ill egal and arbitrary and an appropriate writ or direction needs to be issued to en force the directions of this Court, he urged.

Mr. Saikia, in reply, has while endorsing the decision of the St ate authorities argued that the petitioners as DDT Spray Workers were not entitl ed to any preference or weightage for regular employment as FW and/or SFW in the Department, the nature of duties and functions of the two categories of incumbe nts being obviously different. He, however, admitted that the academic qualifica tion for appointment as a regular FW and/or SFW is a pass in Class VIII and the plea in the counter that a candidate to be eligible ought to have passed the HSS LC examination is an inadvertent mistake. The learned Standing Counsel further a ffirmed that in case of Seasonal Spray Staff the academic qualification is furth er relaxable, if deemed necessary. According to Mr. Saikia, the guidelines dated 21/5/2007 is in meticulous compliance of the directions of this Court, weightag e to past experience having been accorded in the form of relaxation of age of th e persons concerned. Moreover, preference has also been sanctioned for local can didates in the respective blocks. Referring to the Operation Manual for Malaria Action Programme (hereafter also referred to as the Manual) published by the Gov ernment of India, Ministry of Health and Family Welfare, for implementation of t he National Malaria Eradication Programme, Mr. Saikia has insisted that it is ap parent therefrom that the seasonal spray staff like the petitioners who have bee n loosely designated as Seasonal Workers are exclusively engaged in insecticidal spray operations annually and thus have no exposure to the duties dischargeable by the FW and the SFW in the departmental service. The confusion, according to him, is for the identicalness in the designation, both categories of workers bei ng referred to as FW and/or SFW. The learned Standing Counsel, however, apprised this Court that for regular appointment as a FW or SFW, no experience in the wo rks to be performed or any education qualification is insisted upon and that the recruits would be trained in all relevant technical aspects after their inducti on in service.

Mr. Bhuyan in reply relied on the Manual as well to contend that the same belied the assertion of variance in the nature and extent of duties an d responsibilities of the Seasonal Workers and the Regular FW and/or SFW of the Department. He, therefore, maintained that in compliance of the directions of th is Court, the petitioners are entitled to the weightage/preference drawable from their past service and experience in the matter of their selection and appointm ent as FW and SFW in the State service.

The rival submissions have been duly analyzed. The petitioner(s) claim of being engaged as FWs and/or SFWs, as the case may be, under the progra mme for varying periods stretching over years has not been disputed by the respo ndents. The certificates issued by the concerned authorities of the Primary Heal th Centres involved, testify that they had been engaged as such though some of t he documents specify that it was for DDT Spray Operations. It is thus not possib le to conclude on the basis of the materials presently available that all the pe titioners were engaged only in insecticidal spray operations envisaged in the Ma nual.

The litigational background is also not in dispute. In the earli er round of adjudication, this Court declined to entertain the prayer of the pet itioners as DDT Spray Workers under the Scheme to treat them as permanent season al worker for not having been engaged by following any prescribed procedure. How ever, it required the State respondents to issue necessary guidelines for stream lining the process of selection for engagement of seasonal workers to ensure fai rness and transparency in their recruitments. This Court as well did not record any finding on the claim of the petitioners therein asserting similarity in the nature of duties and responsibility of the DDT Spray Workers under the scheme an d the FW and SFW in the State services for want of essential details in that reg ard.

In that perspective, this Court left it to the concerned State a uthorities to mull over this aspect of the controversy observing that if upon su ch consideration, it was found that the experience gathered by the DDT Spray Wor

kers was of any help and would be beneficial , necessary weightage to the services rendered as DDT Spray Workers be provided while making selection and appointment to the post of FW/SFW. While restraining itself from indicating the extent of preference or weightage to be granted, if need be, this Court underlined that the State Authorities before deciding on it would have to ascertain as to whether the services rendered by the DDT Spray Workers were of any relevance to those to be performed by this FW and/or SFW. As a matter of fact, this course was suggested by the learned Counsel for the respondents in course of the arguments. The following operative directions were thus issued to the above effect.

In view of the said discussion as well as the concession given by the respondents, it is hereby ordered that, before proceeding further with the process of selection, pursuant to the advertisement dated 29/9/2006, the respondents are directed to:-

1. Consider as to the relevancy or otherwise of the services rendered by the DDT Spray Workers under the Government of India Sponsored Scheme, to the services of the FW/SFW and to take a decision in that regard and, thereafter, to fix the extent of preference/weightage to be given to such service in making selection to the post of FW/SFW.
2. Issue the corrigendum in widely circulated newspapers published from Assam indicating the extent of preference/weightage to be given and giving a further opportunity to such persons to file their applications.
3. Consider whether any age relaxation can be given to such persons, if so, to indicate the same in the corrigendum to be issued as aforesaid.
4. Issue corrigendum indicating the different categories of posts in Grade IV available for recruitment including the numbers of posts available in each category.

It is more than apparent from the State affidavit that in engaging DDT Spray Workers under the Programme, previous experience is accorded weightage and preference on the basis thereof is extended to the persons concerned subject to their physical fitness. The minimum academic qualification is a pass in Class VIII, which is further relaxable, if required. This averment notwithstanding, the guidelines dated 21/5/2007 do not embody any provision to the said effect though it provides for relaxation in age for candidates having previous experience for application for selection and preference to those from the respective Block Primary Health Areas. In the face of the clear and categorical stand of the respondents in the affidavit on the aspect of preference founded on past experience in my view such a clause in the guidelines ought be incorporated to conform to the directions of this Court in this regard.

With the concession that the minimum academic qualification for regular appointment as FW and/or SFW in the department is a pass in Class VIII standard, the first limb of pleaded objection against the eligibility of seasonal workers or seasonal DDT Spray Workers stands effaced. In the communication HSE/243/20057/8698 dated 21/7/2005 of the Director of Health Services, Assam, Guwahati, incorporating the proposal for filling up the vacant post of Grade III and Grade IV under the National Vector Borne Disease Control Programme i.e. NVBDCP, the duties dischargable by the FW and/or SFW have been identified to be technical in nature and confined to the works in the laboratory. They are to assist the Laboratory Assistant so much so that the laboratory would not function properly in their absence. The letter, however, elaborates that the malaria eradication programme was started in the year 1958 as a national programme and the related scheme was placed under the Centrally sponsored category and the works comprehended thereunder include spray of DDT, collection of blood slides from fever cases, examination of blood slides in BHC Laboratories to provide treatment to those who are found to be malaria positive, dissemination of required information to sensitize and educate the people by distributing leaflets, pamphlets, booklets and posters containing informations regarding the disease and the preventive measures. The letter further underlines that the implementation of the scheme have been immensely hampered due to the unfilled vacancies.

Clause 4.4 of the Manual deals with Insecticidal Spray Operations to be conducted by the District Malaria Officer in every district with the ass

ociation of the Medical Officer in-charge of the concerned Primary Health Centre . The Seasonal Spray Staff contemplated in clause 4.9 would comprise of squads e ach made up of 5 FW and 1 SFW which are required to cover the number of househol ds as mentioned therein. The SFW is supposed to supervise the spray operations a nd maintain records in connection therewith. The Manual further in clause 6.8 en umerates the duties of different categories of staff under the Urban Malaria Sch eme. Thereunder a FW amongst others in addition to helping the SFW in collecting necessary materials and equipments and ensuring the working condition thereof i s required also to apply the recommended larvicide in all the breeding places as signed to him with correct dosage and technique. He is also required to oversee that the drains and water collections are free of vegetation and is further obli ged to obey the instructions of the SFW for all sorts of duties connected with a nti-larval measures and such other duties as may be assigned to him.

The SFW as the incharge of a section is entrusted with the respo nsibility of implementing efficient anti larval measures in his area. Not only i s he personally responsible for proper maintenance and safety of the equipments issued to him, he is required to check those and undertake minor repairs so as t o ready the same for next days works. He is required to distribute the works to the FW so much so that the responsibility in such FW in case of untreated mosqui to breeding place is detected is identified. Under Clause 10.10, the Multiple Pu rpose Worker/SFW of the mobile epidemic team is required to supervise insecticid al spray operations and maintain a diary to record daily achievement of spray co verage of human, mixed dwellings and rooms in the villages sprayed and to submit a report to the appropriate authorities. The duties of the Multiple Purpose Wor kers as specified in 3.1.1. include collection of blood smears from fever cases or cases with history of fever during domiciliary visits to households, maintain records thereof, administer presumptive treatment to all cases from whom blood slides are collected, advise seriously ill cases to visit Public Health Centres for immediate intensive treatment and refer all fever cases with altered sensori um to such Centres. He is also required to contact all FTDs/DDCs/Voluntary Link Workers of his area during his visit to the village concerned and collect blood smears for transmission to the laboratory. He is supposed to replenish the stock of microslides and/or drugs to FTDs and DDCs wherever is necessary and is oblig ed to take all precautions to use properly sterilized needles and clean slides w hile collecting blood smears.

The provisions of the Manual referred to hereinabove demonstrate that a FW or a SFW while discharging their duties under the Programme are not n ecessarily confined to the insecticidal spray operations and their engagements m ay stretch and extend to other activities having a vital bearing on the malaria eradication operation.

In the above context the unambiguous assertion of the petitioner s that as a seasonal FW and SFW they apart from being engaged in DDT spraying wo rks have undertaken jobs of technical nature like collection of blood samples, p reparation of blood slides, assisting Laboratory Assistants in carrying out bloo d tests, distribution of medicines, mosquito nets etc akin to those of their reg ular counter parts under the department/directorate cannot be wished away at one ’s convenience. The certificates issued by the heads of Primary Health Centres w hereunder the petitioners had been engaged authenticating that they had been ser ving as FW and SFW in background of the Manual provisions alluded hereinabove ca nnot be dismissed as wholly inconsequential, the concerned Medical Officer being aware of the implication of such attestation. To discard the petitioners’ claim of similitude in the nature of the duties and responsibilities performed/discha rged by them with those of the regular incumbents in the posts of FW and SFW in the department thus cannot be repudiated without a closer scrutiny of their test imonials and service profiles as seasonal FW and SFW. The sweeping denial of the ir entitlement for any preference or weightage based on experience in the nature and work and responsibility thus does not appear to be convincing.

The official records produced also do not disclose any exercise undertaken by the State authorities pursuant to the directions of this Court on this aspect. The stand of the State respondents to this effect stands revealed i

n their affidavit as noticed hereinabove. This Court, therefore, is of the considered opinion that the directions contained in para 36 of the judgment and order dated 23/2/2007 in WP(C) 3070/2006 have not been attended to by the State respondents as scrupulously as required of them. Though by the letters dated 15/5/2007 and 20/6/2007 of the Under Secretary to the Government of Assam, Health and Family Welfare (A) Department, Assam, the Director of Health Services, Assam, has been asked amongst others to publish an additional advertisement for the post of Surveillance Worker/BHW and Grade IV Staff also for candidates who had served as DDT Spray Workers, it is not clear as to whether the consequential steps have been taken pursuant thereto.

The above notwithstanding a spontaneous determination that the petitioners as Seasonal FW/SFW or Seasonal DDT Spray Workers had been unmistakably engaged in duties alike those of the FW/SFW in the said service is not possible as well. Bearing in mind, however, the provisions of the Manual, it would be unfair and unreasonable to draw an inference only by their designation that they infact had not been involved in duties and operations enriching them with experience and expertise to suitably accomplish the works to be attained by incumbents of the posts of FW and SFW in the State Service.

On a totality of the consideration of the recorded facts as available to this Court, it is considered expedient to dispose of these petitions with the following directions.

1. The State respondents would incorporate a clause in the guidelines dated 21/5/2007 extending preference/weightage to past services and experience of Seasonal Worker/DDT Spray Workers in the matter of engagement of Seasonal Workers under the National Malaria Eradication Programme.
2. The State respondents would permit the Seasonal DDT Spray Workers, FW and SFW engaged under the National Malaria Eradication Programme to participate in the ongoing selection process for appointment to the post of FW/SFW/Surveillance Worker and/or BHW in the State services subject to the academic qualification as prescribed.
3. The petitioners and other similarly situated persons would in their application offering their candidature disclose all material facts and particulars bearing on the duties and responsibilities performed/discharged in course of their engagements as Seasonal DDT Spray Worker, FW and SFW under the Programme and furnish as well the necessary supporting documents substantiating the same.
4. The State respondents would extend due weightage or preference to such Seasonal DDT Spray Workers, FW and SFW engaged under the National Malaria Eradication Programme in course of the selection process on examination of the testimonials and informations furnished by them and their service profile in deserving cases.

5. The State respondents to extend the benefit of preference or weightage by formulate objective norms of uniform application therefor; keeping in view the determination as hereinabove.
6. The State respondents would issue a corrigendum to the above effect and publish the same in two local dailies of wide circulation for timely and adequate information of all concerned and would ensure that sufficient time is afforded to the persons concerned to permit their participation in the process.
7. The State respondents would take immediate steps in terms of directions contained in clause 3 and 4 of para 36 of the judgment and order dated 23/2/2007.

No costs.